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May 5, 2003

Lynn Questell  
Hearing Officer  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37219

Re: Petition for Declaratory Order Before the TRA - US LEC; Airstream  
Docket No. 02-00890

Dear Ms. Questell:


In response to the procedural schedule you issued on April 23, 2003, the parties have determined that neither has any proprietary information which is relevant to this proceeding and, therefore, that a proprietary order is unnecessary. Regarding the issues raised by this case, the parties are in agreement that the Petition for Declaratory Order presents the following issue: whether U.S. LEC properly terminated service to Airstream in light of the provisions of U.S. LEC's tariffs and the parties' contract.

Finally, in a separate pleading, the parties have today filed a joint motion to suspend further proceedings pending the outcome of two, related FCC cases.

Very truly yours,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By:

  
Henry Walker

HW/dw

cc: Clint Simpson

**BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE**

<b>IN RE: PETITION OF US LEC</b>	)	
<b>TENNESSEE, INC. FOR DECLARATORY</b>	)	
<b>ORDER</b>	)	<b>DOCKET NO. 02-00890</b>
	)	

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**JOINT MOTION TO STAY PROCEEDINGS**

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Petitioner, U.S. LEC of Tennessee, Inc. ("U.S. LEC") and Respondent, Airstream Wireless Services, Inc. ("Airstream") jointly file this motion asking that the Hearing Officer stay further proceedings in this docket pending the outcome of two cases, which may be similar, now before the Federal Communications Commission.

**Summary**

The principal issue in this case — whether U.S. LEC properly invoked the anti-fraud provision of its tariff and terminated service to Airstream — is virtually the same as the issues raised in two similar cases now pending at the FCC. Like the case at bar, both FCC proceedings have been referred to the agency by a court under the primary jurisdiction doctrine. As in this case, the regulators have been asked to determine whether a regulated carrier properly invoked the anti-fraud provision of its tariff in terminating service to another carrier. Given the similarities between the factual situations in this matter and the two FCC cases, both Airstream and U.S. LEC believe that the parties and the Authority will benefit from allowing the FCC to address the factual and legal issues raised by these cases before going forward in Tennessee.

### **Background**

As the Authority is aware, this matter arises from a dispute between Airstream, a wireless carrier, and U.S. LEC, a competitive, local exchange carrier. By contract, U.S. LEC agreed to accept traffic from Airstream and transmit those calls to their destination. The contract states that it is governed by, and subject to, U.S. LEC's tariffs. U.S. LEC's tariff on file at the Tennessee Regulatory Authority authorizes U.S. LEC to terminate service without notice in the event of "fraudulent use of the Company's network." Tariff Section 2.5.5(E). Within three months of initiating service to Airstream under the contract, U.S. LEC terminated service without notice because, according to U.S. LEC, the abnormal pattern of the traffic coming from Airstream indicated that U.S. LEC's network was being used for a fraudulent purpose. The issue now before the Authority is whether, in light of the information available to U.S. LEC at the time, the carrier had the right under the contract and its tariffs to discontinue service.

### **Argument to Stay Proceedings**

In March of 2003, Airstream and U.S. LEC learned of two, potentially similar cases now pending before the Federal Communications Commission. In each case, one involving AT&T and one involving MCI WorldCom, the long distance carrier had agreed to terminate international calls for a fixed, per-minute rate, only to discover, that virtually all the traffic consisted of calls to wireless phones in locations where the costs of terminating the calls was more expensive. In each case, the long distance carrier suspected fraud and terminated service without notice. Both cases resulted in lawsuits which were referred by the courts to the FCC under the primary jurisdiction doctrine. The issue now before the FCC is whether AT&T and MCI WorldCom properly terminated service in light of the fraud provisions in their respective

tariffs. Copies of both court decisions referring these cases to the FCC have been filed with the TRA.

Although these cases are not identical to the one now before the TRA (for example, each carrier's tariff language is different), there are obviously striking parallels among all three lawsuits. In each one, a regulated long distance carrier determined, based on what it considered to be abnormal traffic patterns, to invoke the fraud provision of its tariffs and terminate service to a customer. In each case, a court has referred the matter to an expert regulatory body to determine whether the regulated carrier acted properly.

While neither U.S. LEC nor Airstream believes that an FCC decision in these cases will, or should, bind the TRA, both believe that the FCC's investigation and conclusions may be helpful to the parties and to the TRA in resolving the present dispute. Furthermore, delaying this case until after the FCC's ruling may well save the parties and the agency substantial time and resources which would otherwise be devoted to attempting to resolve this matter.

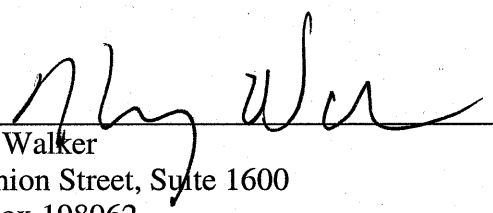
### **Conclusion**

For these reasons, the parties jointly ask that further proceedings in this case be stayed pending the outcome of one or both of the pending FCC matters described above. Either party reserves the right to ask the TRA to re-start this docket prior to that time.

Respectfully submitted,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

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